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and

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X		
BRASSICA PROTECTION PRODUCTS LLC,	:	1:07-cv-07844-SAS
	:	
Plaintiff,	:	
	:	
-against-	:	<b>CAUDILL SEED &amp; WAREHOUSE CO., INC.'S ELECTION TO ASSERT ADVICE OF COUNSEL</b>
CAUDILL SEED & WAREHOUSE CO., INC.	:	
	:	
Defendant.	:	
-----X		

Defendant Caudill Seed & Warehouse Co., Inc. ("Caudill") objects to paragraph 3(f) of the Court's Scheduling Order dated November 13, 2007, as amended by the Stipulation dated January 25, 2008, to the extent it mandates that this election by itself waives any attorney-client privilege. Any waiver of privilege shall be governed only by the applicable law.

Pursuant to that Scheduling Order and subject to its objections, Caudill hereby serves and files its election to assert its written advice of counsel, contained in letters dated February 5, 2007, as a defense to the allegations of willful infringement of U.S. Patent Nos. 5,725,895; 5,968,567; 6,177,122; and 6,242,018.

Respectfully submitted,

s/ Ann G. Schoen  
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Attorneys for Defendant  
Caudill Seed & Warehouse Co. Inc.  
d/b/a Caudill Seed Co.

**CERTIFICATE OF SERVICE**

I hereby certify that on February 1, 2008, the foregoing was filed with the Clerk of the Court via ECF and served in accordance with Southern District's Rules on Electronic Service upon the following parties:

Richard S. Taffet  
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s/ Ann G. Schoen

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